MAJLIS PEGUAM MALAYSIA v. EURO PRESTASI & PARTNERS (M) SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD J
[ORIGINATING SUMMONS: 17D-07-02-2014]
18 OCTOBER 2015

LEGAL PROFESSION: *Practice of law – Unauthorised person – Debt recovery agency provided legal services normally performed by advocate and solicitor of High Court of Malaya – Allegation against – Whether 'authorised person' within meaning of s. 36 Legal Profession Act 1976 ('LPA') – Whether defendant's activities illegal and detrimental to public – Whether breached provisions under LPA – Whether injunction granted to restrain defendant from continuing with its activities*

Acting on several complaints received from the public, the plaintiff filed an originating summons ('encl. 1') against the defendant and prayed for, *inter alia*, (i) a declaration that the defendant was not a qualified person within the meaning of s. 3 of the Legal Profession Act 1976 ('LPA'); and (ii) an injunction to restrain the defendant from providing legal services normally performed and/or provided to the public by an advocate and solicitor of the High Court of Malaya. It was submitted, *inter alia*, that (a) the defendant issued a letter to one Maliga demanding certain sum of monies owed to one company and warned that she would be imprisoned if the debts were not settled; (b) the defendant made an intimidating phone call to one Azliana alleging that she owed some money to one company and threatened to tarnish her reputation at her workplace; and (c) the defendant represented itself as a law firm and threatened one Farid to attend court. In support of its application, the plaintiff further argued that (i) the defendant had put members of the public under threat of litigation and/or criminal prosecution which was an offence under s. 37 of the LPA; and (ii) the defendant's activities were illegal and detrimental to the public since it was not an 'authorised person' within the definition of the LPA. On the other hand, the defendant asserted that it ran a business which dealt with debt recovery and had only liaised with debtors who were indebted to its customers without being in breach of the provisions under the LPA.

Held (allowing encl. 1 with costs):

(1) The defendant performed acts and/or carried out functions which were ordinarily and by custom and tradition performed by an advocate or solicitor. Further, the defendant was not an 'authorised person' within the meaning of s. 36(1) of the LPA since it had not been admitted and enrolled as an advocate and solicitor to the Roll of Advocates and Solicitors of the High Court of Malaya pursuant to the LPA. As a result,

A the defendant ought to be permanently restrained from continuing with its activities in breach of s. 37 of the LPA so that members of the public could be protected from undesirable activities. (paras 12 & 20)

(2) The defendant's acts in threatening the members of public in an attempt to force them to pay, tantamount to offences under s. 37 of the LPA. If B these acts were not curbed, such activities may flourish and could lead to disastrous consequences since the wrongdoings would not be checked and/or regulated by the Bar Council. Further, any losses suffered by the public would not be covered by the insurance scheme which was mandatory for all legal practitioners. Such acts would also put the legal C profession into jeopardy and if allowed to continue, would erode the public's confidence in the legal profession and its efficiency in performing its statutory functions under the LPA. (paras 21 & 22)

Case(s) referred to:
Allen v. Aldridge (1843) 5 Beav 401 ***(refd)***
D *Bar Malaysia v. HF Vitality (Malaysia) Sdn Bhd [2003] 1 CLJ 510 HC* ***(refd)***
In Re Baker, Lees & Co [1903] 1 KB 189 ***(refd)***
R v. Campbell (1974) 45 DLR (3d) 522 ***(refd)***
Re Sanderson [1927] VLR 394 ***(refd)***
Turner (East Asia) Pte Ltd v. Builders Federal (Hong Kong) Ltd & Anor [1998] 3 MRLR ***(foll)***

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Legislation referred to:
Legal Profession Act 1976, ss. 3, 36(1), 37

Legal Profession Act (Cap 161) [Sing], ss. 29(1), 30(1), (2)

For the plaintiff - Arthur Wang Ming Way & Nurufarina Ab Rahim; M/s Arthur Wang, F *Lian & Assocs*
For the defendant - Murali Achan PE Achan; M/s K Kulasekar Achan & Assocs

Reported by Kumitha Abd Majid

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JUDGMENT

Asmabi Mohamad J:

Introduction

[1] The plaintiff in this originating summons ("encl. 1") is the Bar Council Malaysia which is a body established under the Legal Profession Act 1976 H ("the LPA") with the objects, amongst others, to regulate the legal profession in Malaysia and to protect the public in all matters whether ancillary and/or incidental to the law.

[2] The defendant is a private limited company incorporated under the I Companies Act 1965 with its main object as a debt recovery agency.

[3] By this origination summons, the plaintiff claimed that the defendant who is not an "authorised person" within the meaning of the LPA has been providing legal services to the public and thereby had breached the provisions of ss. 36 and 37 of the LPA. The plaintiff applied for the following reliefs:

(a) A declaration that the defendant is not a "qualified person" within the meaning of s. 3 of the LPA; and

(b) An injunction to restrain the defendant from continuing to provide legal services to the public in breach of the provisions of ss. 36(1) and 37 of the LPA;

(c) An injunction to restrain the defendant from continuing and/or to be involved in providing legal services to the public in breach of s. 37 of the LPA; and

(d) An injunction to restrain the defendant to, in any way, whether directly or indirectly request and/or demand from the clients and/or customers for the purpose of providing and/or acting as and/or performing the functions in the nature of offering legal advice and/or to provide legal services normally performed and/or provided to the public by an advocate and solicitor of the High Court of Malaya.

The Documents

[4] For the purpose of encl. 1 the following documents were filed and referred to by the court:

(a) Originating motion dated 6 February 2014 ("encl. 1");

(b) Affidavit in support affirmed by Wee Thiam Seng dated 7 February 2014 ("encl. 3");

(c) Supplemental affidavit in support affirmed by Wee Thiam Seng dated 18 February 2014 ("encl. 10");

(d) Notice of application dated 11 February 2014 ("encl. 8");

(e) Affidavit in support affirmed by Wee Thiam Seng dated 7 February 2014 ("encl. 9");

(f) Supplemental affidavit in support by Wee Thiam Seng dated 18 February 2014 ("encl. 11");

(g) Affidavit in reply affirmed by Mahandran a/l Althinamilagi dated 4 March 2014 ("encl. 13");

(h) Affidavit in reply affirmed by Wee Thiam Seng dated 13 March 2014 ("encl. 14");

(i) Supplemental affidavit by Wee Thiam Seng dated 25 April 2014 ("encl. 25"); and

(j) Affidavit in reply affirmed by Mahandran a/l Althinamilagi dated 7 May 2014 ("encl. 26").

Background Facts

[5] The plaintiff had received four complaints from the public dated 4 July 2013, 17 June 2013, 29 May 2013 and 12 September 2012 respectively against the defendant herein which purported to provide services that are normally and customarily carried out by an advocate and solicitor of the High Court of Malaya. The complaints were as stated in the plaintiff's written submission, which are being reproduced below with some modifications where necessary:

(a) The complaint by one Maliga A/P Sivasamy ("Maliga") that the said Maliga had received a letter from the defendant demanding certain sum of monies owed to Blondal Sales & Services Sdn Bhd and requiring the said Maliga to attend court. Upon receipt of the said letter, the said Maliga called the defendant and she was put through to the defendant's agent identified as one Haji Anuar. *Vide* the said telephone conversation the said Haji Anuar had warned Maliga that she would be imprisoned for failure to settle the debt (see exh. "WTS-6" of encl. 11);

(b) The complaint by one Azliana who had received an intimidating phone call from a representative of the defendant, identified as Haji Mahadi who alleged that the said Azliana owed some money to the company known as Singer Sdn Bhd. Before the said Azliana could explain anything, the said Haji Mahadi had threatened Azliana to tarnish her reputation at her workplace (see exh. "WTS-6" of encl. 11);

(c) The complaint by one Teh Woon Mee ("TWM") who had received a phone call on 28 February 2013 requesting the said TWM to be at the police station to assist in an investigation of some debts owed to Courts Mammoth. The said TWM was warned by the defendant if he failed to appear at the police station, a warrant of arrest would be issued against him. The telephone conversation gave the impression that the defendant's representative is a legally qualified person as he had used the term "tindakan undang-undang Seksyen 415" and had also mentioned of the term of imprisonment of two to three years and the fine of RM20,000 (see exh. "WTS-6" of encl. 11); and

(d) The complaint by one Mohd Farid ("Farid") who had received a telephone call from the representative of the defendant on 11 September 2012 from one Haji Azmi who had represented to Farid, the defendant is a law firm and had threatened Farid to attend court (see exh. "WTS-7" of encl. 11).

[6] The defendant had also issued a "surat perjanjian pembayaran hutang" thus giving the impression to the public at large that the defendant is performing the role of an advocate and solicitor of the High Court of Malaya. The defendant had also issued a notice on court proceedings and notice of trial. The above acts were performed by the defendant despite the defendant is not a legal firm and there is no lawyer in the defendant company.

[7] Pursuant to an application by the plaintiff, this court had on 19 February 2012 granted an interim injunction to injunct the defendant from contacting the public and introducing itself as the legal department and/or to issue "debt settlement agreement" "surat perjanjian pembayaran hutang" on behalf of the clients.

[8] Despite the interim injunction having been made against the defendant, the plaintiff continues to receive complaints from the public about the defendant's conduct which breach the provision of s. 37 of the LPA. On 8 April 2014 the plaintiff received a complaint from Sugirtha A/P Ramachandran ("Sugirtha") who complained about a short message service ("SMS") she received from the representative of the defendant who identified himself as someone from the legal department and/or as an advocate and solicitor acting for and on behalf of AEON Credit Service (M) Sdn Bhd (see exh. "WTS-8" of encl. 25).

[9] Based on the above complaints the plaintiff believed that defendant had blatantly disregarded the provisions of the LPA by purportedly providing services that are normally and customarily carried out by an advocate and solicitor of the High Court of Malaya. Therefore, the plaintiff prayed for reliefs sought *vide* its encl. 1 to be granted by this court.

Issues Raised By The Respective Parties

[10] The gist of the issues raised by the respective parties could be stated as follows:

For the plaintiff

(i) with respect to prayer 1 where the plaintiff had sought for a declaration that the defendant is not a "qualified person" within the meaning of the LPA, the plaintiff contended that the defendant had acknowledged that it is not a firm of advocate and solicitor within the meaning of the LPA. In view of the aforesaid the plaintiff contended that it is entitled to the relief sought.

(ii) with respect to the prayers of injunctive reliefs mentioned in para. 3(b), (c) and (d) above, the plaintiff contended that from the reading of the complaints it received from the members of the public as shown in exhs. WTS-6, WTS-7, and WTS-8 of encl. 11 and encl. 25 the gist of which had been reproduced in paras. 4 to 8 above, it is clear that the defendant is not an authorised person within the meaning of s. 36(1) of the LPA.

(iii) the acts and/or conduct of the defendant as illustrated above, in introducing and/or referring itself as a legal department and exerting its authority as if the defendant is a firm of advocate and solicitor fell within the acts customarily, whether by history or tradition being performed by an advocate and solicitor under the LPA.

(iv) the conduct of the defendant in threatening the public for legal repercussions in event of default gave the impression to the public as if it is a firm of advocate and solicitor, which was performing the activities capable of being performed by advocate and solicitor of the High Court of Malaya.

(v) the fact the defendant was compelling the public to make payment with respect to the alleged and unproven debts and in the course of that had put the members of the public under threat of litigation and/or criminal prosecution tantamount to an offence under s. 37 of the LPA. Therefore, these activities ought to be stopped or restrained in order to protect the public at large from illegal acts of the defendant.

(vi) the plaintiff further contended that if the injunction sought for is not granted the defendant would continue to carry out these illegal activities which were detrimental to the public as the defendant is not an "authorised person" within the definition of the LPA, such activities would go unchecked.

For the defendant

(i) the injunctive relief sought by the plaintiff are vague and ambiguous. The injunction sought to restrain the defendant from providing "perkhidmatan undang-undang" and/or "the legal services" and/or to restrain the defendant from offering legal advice and/or providing legal services or functions customarily provided by an advocate and solicitor to the public would put the defendant in a difficult and embarrassing position of not knowing what is the defendant exactly being restrained from doing. This is because the specific acts mentioned above were not stated in the originating summons. Further, the phrases used by the plaintiff were not stipulated in ss. 36 and 37 of the LPA.

(ii) the term "legal services" has wider meaning than performing the function specifically performed by an advocate and solicitor of the High Court of Malaya.

(iii) based on the facts as illustrated above the scale ought to tilted in favour of the defendant, as the business of the defendant is debt recovery. These are the services it provided to its customers such as Singer (Malaysia) Sdn Bhd, Courts Mammoth Sdn Bhd and Blondal Sale and Services Sdn. The defendant has staff working under it who are serving various departments under the defendant including its legal department.

(iv) amongst the duties of the legal department of the defendant was to liaise with the customers of the defendant and the debtors of the defendant who were indebted to the customers of the defendant. The term legal department is used not to cloud the minds of the public but as a convenient way of describing the specific department of the defendant dealing with debt recovery. In the course of that, the defendants had sent some 48 thousands of letters to the debtors of its customers.

(v) the injunction, which the plaintiff sought in such broad term, would cause the defendant's business as debt recovery agency to collapse. Further, as the defendant had more than 70 staffs, it would be unfair for an injunction to be issued against the defendant just because one or two of its staff had committed the acts, which the plaintiff described as illegal and in contravention of s. 37 of the LPA.

(vi) the defendant had also agreed, without admission of liability, not to use the term "Jabatan Undang-Undang" and had communicated the same to the plaintiff. However, the plaintiff had not responded to the letter issued by the defendant.

(vii) the "perjanjian pembayaran hutang", a sample of which had been exhibited herein did not in any way breach s. 37 of the LPA. A perusal of the said "perjanjian pembayaran hutang" would disclose that the defendant had clearly stated that further action would be taken by an advocate and solicitor and not by the defendant themselves.

(viii) the complaints that were shown in the affidavits of the plaintiff were so few as compared to some 48 thousands debtors listed by the defendant. As there are no serious questions to be tried that the defendant had breached ss. 36 and 37 of the LPA, encl. 1 ought to be dismissed with costs.

Decisions Of The Court

[11] *Vide* prayer 1, the plaintiff had sought for a declaration that the defendant is not a "qualified person" within the meaning of the LPA. The defendant had not shown by way of evidence that it is a "qualified person" for the purpose of the LPA. I will not delve into the first prayer as the facts of the case as presented herein were crystal clear and unrebutted by the defendant. The fact remained the defendant had not been admitted to the Roll of Advocates and Solicitors of the High Court of Malaya as required under the LPA. Further, the defendant itself had acknowledged at para. 19 of its written submission that it is not a firm of advocates and solicitors.

[12] With respect to the prayers of injunctive reliefs mentioned in para. 3(b), (c) and (d) above, the plaintiff contended that from the reading of the complaints it received from the members of the public as shown in exhs. WTS-6, WTS-7, and WTS-8 of encl. 11 and encl. 25, the gist of which had

A been reproduced in paras. 4 to 7 above, it is clear that the defendant is not an "authorised person" within the meaning of s. 36(1) of the LPA as the defendant had not been admitted and enrolled as advocate and solicitor to the Roll of Advocates and Solicitors of the High Court of Malaya pursuant to the LPA.

B **[13]** What acts tantamount to acts of an advocate and solicitor had been illustrated in the case of *Turner (East Asia) Pte Ltd v. Builders Federal (Hong Kong) Ltd & Anor* [1998] 3 MRLR @ p. 601 where the learned JC Chan Sek Keong had referred to the case of *Re Sanderson* [1927] VLR 394 which held that a debt collector who had threatened to issue a summons against the C debtor of his customer had performed an act usually done by a solicitor.

[14] In *R v. Campbell* (1974) 45 DLR (3d) 522 where an accountant who formed a company, prepared a partnership agreement and declaration and was involved in the land sale for his client was found guilty of "acting as a solicitor" under the Law Society Act 1970 of Ontario. The court held that D by the accountant's act to give advice on legal questions, framed documents intended to have legal operation and assisted in matters affecting one's legal position, the accountant was guilty of "practising as solicitors".

[15] In *In Re Baker, Lees & Co* [1903] 1 KB 189, a parliamentary agent, who was also a solicitor had delivered a Bill of costs for taxation involving some E works he did in promoting a Bill in Parliament was held to be performing his work as a Parliamentary agent and not as a solicitor. The court in this case had referred to the case of *Allen v. Aldridge* (1843) 5 Beav 401; 49 ER 633 where the court through the judgment of Lord Langdale had said:

> F The business contained in a taxable bill may be business of which no part was transacted in any court of law or equity; but I am of the opinion that it must be the business connected to the profession of an attorney or solicitor - business in which the attorney or solicitor was employed, because he was an attorney or solicitor, or in which he would not have been employed, if he had not been an attorney or solicitor, or if the G relation of attorney or solicitor and client had not subsisted between him and his employer.

[16] In *Turner (East Asia) Pte Ltd v. Builders Federal (Hong Kong) Ltd & Anor* (*supra*) the court had the opportunity to examine ss. 29(1) and 30(1) of the Singapore Legal Profession Act (almost identical to ss. 36(1) and 37 of our H LPA) and held that the two tests to be constructed from the authorities as well as the provisions of ss. 29 and 30 of the Singapore Legal Profession Act are:

(a) Other than, the specified acts mentioned in s. 30(1) and (2), an act is an act of an advocate and solicitor when it is customarily, either by history I or tradition, form the exclusive function of the advocate or solicitor to provide. Such acts would be acts of giving advice on legal rights and obligations, drafting contracts and pleadings;

(b) A person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is employed to act as such matter connected with his profession.

[17] Applying the above test to the case at hand, it is beyond doubt that the services and/or acts carried out by the defendant are customarily, by history and tradition acts or services performed by an advocate and solicitor. The defendant had admitted that it ought not to be penalised by the plaintiff for acts committed by a very small number of its employees. The defendant had also agreed, *albeit* without admitting liability, to amend the contents of its "debt settlement agreement""surat perjanjian pembayaran hutang", a sample of which had been exhibited in the same enclosure (see exh. M-1 in encl. 13).

[18] In *Bar Malaysia v. HF Vitality (Malaysia) Sdn Bhd* [2003] 1 CLJ 510; [2003] 5 MLJ 159 the plaintiff had sought an injunction to restrain the defendant from continuing to advertise its preparedness to provide services of legal in nature to "unsuspecting and gullible" members of the public. The defendant was plying its trade at "The Mines Shopping Fair" which encroached into the legal profession of the country. The defendant through its agents, servants and employees was alleged to have advertised and offered to the public legal services under caption "The Rights Program" for services, amongst others, arrest, road traffic accidents, airport arrest, asset, battery, homicide and bail, possession of illicit drugs and narcotics, will and probate matters, breach of contract, medico legal matters, unfair dismissal and breach of contract.

[19] The learned judge in the above quoted case had ruled that as the defendant was not persons or bodies to whom the Bar Council had issued Sijil Annuals under s. 32 of the LPA "the legal services which the defendant rendered to the members of the public were only capable of being performed by advocates and solicitors of the High Court of Malaya and no one else. On the facts, the defendant had *prima facie* committed a breach of the Act."

[20] In view of the aforesaid I am satisfied that the defendant in the case before me was performing acts and/or were carrying out the functions which were ordinarily and by custom and tradition performed by an advocate or solicitor. Based on the above the defendant ought to be permanently restrained from continuing with its activities in breach of the provision of s. 37 of the LPA so that the members of the public could be protected from undesirable activities.

[21] The acts of the defendant in giving threats to the members of the public in an attempt to force them to pay as demonstrated in the plaintiff's affidavits filed herein, tantamount to offences under s. 37 of the LPA. If these acts are not curbed such activities may flourish and could lead to disastrous consequences as the wrongdoings would not be checked and or regulated by the Bar Council. Any loss suffered by the public would not be covered by the insurance scheme which is mandatory for all legal practitioners.

[22] Such acts would also put the legal profession into jeopardy and if allowed to continue would erode the public's confidence in the legal profession and in its efficiency in performing its statutory functions under the LPA. Thus, the integrity of the legal profession would be at stake.

[23] Further in view of the fact that the defendant was compelling the public to make payment with respect to the alleged and unproven debts and in the cause of that had put the members of the public under threat of litigation and/or criminal prosecution, tantamount to an offence under s. 37 of the LPA. Therefore, these activities ought to be stopped and or restrained in order to protect the public at large.

[24] In essence, the complaints the plaintiff received involved the acts of the defendant, which are normally, historically and customarily carried out by advocates and solicitors who are enrolled into the Roll of Advocates and Solicitors of the High Court of Malaya. The plaintiff had shown by way of affidavit evidence of the relevant acts of the defendant tantamount to acts, which are normally, historically and customarily carried out by advocates, and solicitors who are enrolled into the Roll of Advocates and Solicitors of the High Court of Malaya.

Conclusion

[25] Based on the aforesaid and in the light of the clear facts that the activities performed by the defendant had breached s. 37 of the LPA and such activities if permitted to be continued and left unchecked will erode the public's confidence in the plaintiff in carrying out its statutory functions and thus affect the integrity of the legal profession in Malaysia, the plaintiff's prayers sought *vide* encl. 1 are allowed with costs of RM5,000 to be paid by the defendant to the plaintiff.